

REMARKS

Claims 1-17 and 19-36 are pending in the present application.

These claims have been rejected under 35 U.S.C. 103(a) as being unpatentable over Ghazarian in view of Official Notice.

This rejection is respectfully traversed for the following reasons.

Claim 1 recites a computer-implemented system for preventing unauthorized access to products in a retail system, comprising:

- an order-processing system for receiving a purchase order from a customer, and
- a tracking system for tracking a product ordered by the customer to prevent unauthorized access to the product.

The Examiner admits that Ghazarian does not disclose the order processing system for receiving a purchase order from a customer. However, the Examiner takes the position that “it was old and well known at the time of the invention to place electronic orders for products then have them shipped.”

First, it is respectfully submitted that if Ghazarian does not disclose an order-processing system for receiving a purchase order from a customer, the reference cannot disclose tracking a product **ordered by the customer** to prevent unauthorized access to the product.

It is well settled that the test for obviousness is what the combined teachings of the references would have suggested to those having ordinary skill in the art. *Cable Electric Products, Inc. v. Genmark, Inc.*, 770 F.2d 1015, 226 USPQ 881 (Fed. Cir. 1985). In determining whether a case of prima facie obviousness exists, it is necessary to ascertain whether the prior art teachings

appear to be sufficient to one of ordinary skill in the art to suggest making the claimed substitution or other modification. *In re Lalu*, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1984).

However, the reference does not disclose receiving a purchase order from a customer and tracking a product ordered by the customer to prevent unauthorized access to the product. Accordingly, the reference is not sufficient to arrive at the claimed invention.

It is noted that if the Examiner relied upon common knowledge of the art or "well known" prior art without expressly indicating such reliance, the Examiner is respectfully requested to cite a reference in support of his position (see MPEP 2144.03).

Moreover, claim 3 recites that the tracking system is configured for tracking food products ordered by the customer.

The Examiner admits that Ghazarian does not teach or suggest tracking food products, but takes the position that "the limitation of food product does not impart any functionality, this limitation is considered to be non-functional descriptive material." The Examiner relies upon MPEP 2106(b) for support of his position.

It is respectfully submitted that there is no section 2106(b) in the MPEP. It appears that the Examiner meant section 2106 IV.B.1(b) relating to nonfunctional descriptive material.

It is noted that this provision of MPEP relates to "descriptive material that cannot exhibit any functional interrelationship with the way in which computing processes are performed." Examples of such nonfunctional descriptive material are "music, literature, art, photographs and mere arrangements or compilations of facts or data stored so as to be read or outputted by a computer without creating any functional interrelationship."

It is respectfully submitted that the limitation requiring the tracking system to be configured for tracking food products ordered by the customer has no relation to “nonfunctional descriptive material.”

The Examiner has apparently failed to give adequate consideration to the particular problems and solution addressed by the claimed invention. *Northern Telecom, Inc. v. Datapoint Corp.*, 908 F.2d 931, 15 USPQ2d 1321 (Fed. Cir. 1990); *In re Rothermel*, 276 F.2d 393, 125 USPQ 328 (CCPA 1960). Specifically, as described in the specification, due to terrorists' activity, there is increasing public concern over bioterrorism and its impact on the food supply. All segments of the food-related industry including production, processing, handling, distribution and retail sectors are affected by the increased threat.

To address this problem, the present invention offers a tracking system capable of tracking food products ordered by the customer to prevent unauthorized access to the products. As one skilled in the art would realize, handling of food products, including their packing and delivery from storage facilities to retail facilities and from retail facilities to customers, substantially differs from handling of non-food products, and creates much greater challenge in terms of preventing bioterrorism activity.

The prior art of record does not address the problem addressed by the present invention, and does not teach or suggest the claimed solution.

Further, in the application of a rejection under 35 U.S.C. §103, it is incumbent upon the Examiner to factually support a conclusion of obviousness. As stated in *Graham v. John Deere Co.* 383 U.S. 1, 13, 148 U.S.P.Q. 459, 465 (1966), obviousness under 35 U.S.C. §103 must be determined by considering (1) the scope and content of the prior art; (2) ascertaining the

differences between the prior art and the claims in issue; and (3) resolving the level of ordinary skill in the pertinent art.

It is respectfully submitted that the Examiner did not point out specifically wherein Ghazarian discloses the features recited in claims 2, 4-17 and 19-36.

Moreover, the Examiner admits that the reference does not disclose “the individual storage and pick up features of the instant claims.” The Examiner takes the position that these features were old and well known.

This position is respectfully traversed. The features recited in the dependent claims relate to handling products and, particularly, food products in a retail system involving a product-ordering mechanism.

It is respectfully submitted that the prior art of record does not teach or suggest preventing unauthorized access to products in a retail system with a product-ordering mechanism using the features recited in the dependent claims.

Therefore, there is no reason to conclude that these features are obvious within the meaning of 35 U.S.C. 103.

The Examiner is reminded that to establish a *prima facie* case of obviousness under 35 U.S.C. § 103, two basic criteria must be met. First, there must be some suggestion or motivation in the references themselves to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success for the modification or combination of references. The teaching or suggestion to make the modification or combination of prior art and the reasonable expectation of success must both be found in the prior art, and not based on Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

It is respectfully submitted that the Examiner's conclusion of obviousness is based on the Applicant's disclosure rather than on the prior art of record. Ghazarian provides no teaching or suggestion to make a modification proposed by the Examiner to arrive at the claimed invention.

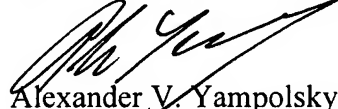
In particular, Ghazarian discloses a method for vehicle and cargo tracking. To implement this method, no product ordering is needed. It is not apparent why one skilled in the art would have recognized any advantage to be gained by adding product ordering aspects of the claimed invention to the Ghazarian method.

Accordingly, Applicant submits that the lack of any motivation for the proposed modification of Ghazarian to arrive at the claimed invention, coupled with the particular problems addressed and solved by the claimed invention, undermine the basis for the Examiner's rejection under 35 U.S.C. § 103. Applicant, therefore, respectfully submits that the rejection of claims 1-17 and 19-36 under 35 U.S.C. § 103 is improper and should be withdrawn.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



Alexander V. Yampolsky
Registration No. 36,324

600 13th Street, N.W.
Washington, DC 20005-3096
Phone: 202.756.8000 AVY/dlb
Facsimile: 202.756.8087
Date: May 17, 2005

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